FILE COPY

Supreme Court, U. S.
FILED
MAY 5 1947
CHARLES ELMORE CROPLEY
CLERK

No. 682

In the Supreme Court of the United States

OCTOBER TERM, 1946

PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, APPELLANT

v.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE APPELLANT

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute and regulation involved	2
Statement	2
Summary of argument	7
Argument:	
I. The Price Control Extension Act of 1946 and the Rent Regulation for Housing prohibited the enforcement of the eviction judgments entered by the State court	9
II. The Price Control Extension Act of 1946, as applied to the instant case, is constitutional	12
III. The sheriff and constable should not have been dismissed from the action	21
Conclusion	22
Appendix	23

CITATIONS

Cases:	
Block v. *Hirsh*, 256 U. S. 135	13
Blount v. *Windley*, 95 U. S. 173	14, 17
Bowles v. *Hall*, 63 F. Supp. 826	21
Bowles v. *Seminole Rock & Sand Co.*, 325 U. S. 410	11
Bowles v. *Willingham*, 321 U. S. 503	13, 21
Brown v. *Wick & Campbell*, 48 F. Supp. 887	21
Brown v. *Wright*, 137 F. 2d 484	21
Calder v. *Bull*, 3 Dall. 386	13
Carpenter v. *Wabash Ry. Co.*, 309 U. S. 23	13
Chase Securities Corp. v. *Donaldson*, 325 U. S. 304	18
Chicago & Alton R. R. v. *Tranbarger*, 238 U. S. 67	16, 17
Danforth v. *Groton Water Co.*, 178 Mass. 472	18
Dillingham v. *McLaughlin*, 264 U. S. 370	15
East New York Savings Bank v. *Hahn*, 326 U. S. 230	14
Forbes Pioneer Boat Line v. *Board of Commissioners*, 258 U. S. 338	18
Guaranty Trust Co. of New York v. *Henwood*, 307 U. S. 247	14
Hadacheck v. *City of Los Angeles*, 239 U. S. 394	16, 17
Hamilton v. *Kentucky Distilleries Co.*, 251 U. S. 146	15
Hirabayashi v. *United States*, 320 U. S. 81	15
Holyoke Power Co. v. *Paper Co.*, 300 U. S. 324	14
Home Building & Loan Association v. *Blaisdell*, 290 U. S. 398	14
Louisville & Nashville R. R. v. *Motley*, 219 U. S. 467	14

Cases—Continued	Page
Marcus Brown Holding Co. v. *Feldman*, 256 U. S. 170	13, 14
Miller v. *Schoene*, 276 U. S. 272	16
Milliken v. *United States*, 283 U. S. 15	18
Missouri & Arkansas L. & M. Co. v. *Greenwood District*, 249 U. S. 170	13
Mugler v. *Kansas*, 123 U. S. 623	16
Mulford v. *Smith*, 307 U. S. 38	16
New York Central R. R. v. *United States, No. 2*, 212 U. S. 500	15
New York v. *United States*, 257 U. S. 591	14
Norman v. *B. & O. R. Co.*, 294 U. S. 240	14
Parmino Lumber Co. v. *Marshall*, 309 U. S. 370	13
Porter v. *Dicken*, 328 U. S. 252	21
Porter v. *Lee*, 328 U. S. 246	21
Porter v. *Shibe*, 158 F. 2d 68	10, 20
Rahrer, In re, 140 U. S. 545	16, 17
Ruppert v. *Caffey*, 251 U. S. 264	16
Samuels v. *McCurdy*, 267 U. S. 188	16
Schooner Peggy, The, 1 Cranch 103	13
Taylor v. *Brown*, 137 F. 2d 654, certiorari denied, 320 U. S. 787	15
United States v. *Freight Ass'n*, 166 U. S. 290	16
United States v. *Hudson*, 299 U. S. 498	18
Untermyer v. *Anderson*, 276 U. S. 440	19
Welch v. *Henry*, 305 U. S. 134	18
Wright v. *Union Central Life Ins. Co.*, 304 U. S. 502	13
Yakus v. *United States*, 321 U. S. 414	12, 13
Constitution of the United States:	
Article I, Section 9	12
Fifth Amendment	7, 12, 13
Fourteenth Amendment	13
Statutes:	
Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 58 Stat. 632, 59 Stat. 306, 50 U. S. C., App., Supp. V, 901 et seq	2, 15
Section 2(d)	23
Section 4(a)	23
Section 204(d)	12
Section 205(a)	21, 24
Judicial Code, Section 265	8, 21
Price Control Extension Act of July 25, 1946, Pub. Law No. 548, 79th Cong., 2d sess	7, 9, 11, 12, 15, 17, 19, 20
Section 1	3, 24
Section 18	3, 9, 24
Regulation:	
Rent Regulation for Housing	2, 7, 11
Section 6	3, 10, 26

Miscellaneous:

	Page
H. J. Res. 371 (92 Cong. Rec. 8132, 8204, 9005, 9918, 10064)	19
H. J. Res. 372 (92 Cong. Rec. 8205)	19
H. J. Res. 375 (92 Cong. Rec. 8318)	19
H. R. 6894 (92 Cong. Rec. 7779)	19
H. R. 7017 (92 Cong. Rec. 8993)	19
Interpretation 6–I of the Rent Regulation for Housing (Pike & Fischer, OPA Rent Service 200:1591)	11, 31
Interpretation 6–VI of the Rent Regulation for Housing	10, 11, 29
S. J. Res. 171 (92 Cong. Rec. 8168)	19
S. J. Res. 175 (92 Cong. Rec. 8660)	19
Stimson, *Retroactive Operation of Law—A Problem in Constitutional Law*, 38 Mich. Law Rev. 30	18

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 682

PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, APPELLANT

v.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE APPELLANT

OPINION BELOW

The court below rendered no opinion. Its findings of fact and conclusions of law appear at pp. 86–91 of the Record.

JURISDICTION

The judgment of the District Court was filed on August 31, 1946 (R. 86–91). Application for appeal was filed on September 27, 1946, and the appeal was allowed on September 28, 1946 (R. 94–95). Probable jurisdiction was noted by this Court on December 9, 1946 (R. 97).

The jurisdiction of this Court rests on Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349a.

QUESTIONS PRESENTED

1. Whether the Price Control Extension Act of 1946 is unconstitutional in so far as it prohibits a landlord, after the date of its enactment, from securing execution of an eviction judgment without compliance with the requirements of the Rent Regulation, where the judgment was obtained during the period of suspension of controls (July 1–July 25, 1946).

2. Whether the sheriff and constable who threatened to execute a judgment of eviction of the State court should have been enjoined from so proceeding, along with the landlords involved.

STATUTES AND REGULATION INVOLVED

The statutes and regulation involved are the Emergency Price Control Act of 1942, as amended, in particular by the Price Control Extension Act of 1946, and the Rent Regulation for Housing. The pertinent portions thereof are set forth in the Appendix, *infra*, pp. 23–29.

STATEMENT

The Emergency Price Control Act, as amended, 56 Stat. 23, 58 Stat. 632, 59 Stat. 306, 50 U. S. C. App., Supp. V, 901, *et seq.*, expired on June 30, 1946, as the result of a Presidential veto of a proposed extension law. After that date a number of landlords in the Fort Worth, Texas, De-

fense-Rental Area commenced proceedings in a State court to evict certain of their tenants without having complied with the provisions of the Rent Regulation for Housing which had been in force until the expiration of the Emergency Price Control Act. In some instances the judgments of eviction had been obtained by July 25, 1946, and in others they had not yet been entered. On that date the Price Control Extension Act of 1946 was enacted. Section 1 thereof, *infra*, p. 24, extended the Emergency Price Control Act to June 30, 1947. Section 18, *infra*, pp. 24–25, provided, among other things, that the Act was to take effect as of June 30, 1946, and that (with exceptions not here pertinent) all regulations in force on that date were to be in effect in the same manner and to the same extent as if the Act had been enacted on June 30, 1946, but that no transaction, act, or failure to act occurring between June 30, 1946, and July 25, 1946, was to be deemed a violation. Section 6 of the Rent Regulation for Housing, *infra*, pp. 26–29, both on June 30, 1946, and after July 25, 1946, prohibited (with certain exceptions not here material) eviction from housing accommodations of tenants who continued to pay their rent, unless the landlord had obtained from the Administrator a certificate authorizing him to pursue his remedies in accordance with the local law. Appellees Page, Hughes, and Chandler, who were landlords, had, without having received certificates as pro-

vided by the regulations, obtained judgments of eviction before July 25, 1946, in the court of Gus Brown, Justice of the Peace for Precinct No. 1, Tarrant County, Texas, against tenants who had continued to pay their rent. These landlords, after July 25, 1946, attempted to enforce such judgments, and appellees Rhodes and Montgomery, sheriff and constable, respectively, of Tarrant County, Texas, were about to execute the judgments. Various other landlords obtained judgments of the same character after July 25, 1946, without having complied with the Rent Regulation. On July 31, 1946, the then Price Administrator brought a suit against Justice of the Peace Brown, Sheriff Rhodes, and Constable Montgomery in the United States District Court for the Northern District of Texas to enjoin the attempts made in Justice of the Peace Brown's court after July 25, 1946, by landlords who had not complied with the Rent Regulation, to evict their tenants (R. 4–10).

At a hearing on the Administrator's motion for a preliminary injunction, held on August 5, 1946, the court below agreed that the landlords would be proper parties to the suit, and continued the hearing until August 7 (R. 44). On the latter date, the Administrator, with leave of court, filed an amended complaint, making the various landlords involved parties to the suit, and requesting that

they also be enjoined from attempting to evict their tenants until they had complied with the applicable provisions of the Rent Regulation (R. 12–18). On August 23, 1946, counsel for the Administrator agreed that the suit might be dismissed as to Justice of the Peace Brown (R. 55), and on that date the hearings were closed (R. 86). On August 30, 1946, the court ruled: (1) that an injunction should issue against certain of the defendants who had not obtained eviction judgments prior to July 25, 1946: (2) that the action should be dismissed as to certain of the defendants who had complied with the regulations or had dismissed their eviction proceedings; (3) that the action should be dismissed as to the defendants Rhodes and Montgomery; and (4) that the injunction should be denied as to the defendant landlords Page, Hughes, and Chandler, who had obtained four judgments of eviction prior to July 25, 1946, the court stating as to the three defendants: "the Court concludes that as to all of said above-mentioned four eviction suits that the provisions of the Price Control Extension Act of 1946 and of the Rent Regulation for Housing are invalid, and the Court concludes that a judgment recovered before July 25, 1946 in an eviction suit prosecuted according to the State Laws of Texas should be respected, and that the Court

733763—47—2

will not issue an injunction."[1] (R. 86–91.) This appeal involves only points (3) and (4) of the court's conclusions. A stay pending the appeal was granted by the court below (R. 91–93).

---

[1] The reasoning of the court appears at page 64 of the Record, as follows:

> * * * But, aside from these penal provisions, and whether it comes under the provision of the Constitution, in reference to ex post facto law, it is the view of the court that when a man takes a judgment of the court, that was lawful at the time, it becomes a vested right, just as much so as if he had taken a deed of conveyance that was lawful at the time.
>
> Therefore, all judgments that were rendered, and become final before a new law on the OPA was enacted, this court is inclined to respect, and to treat them as vested rights, and as not coming directly under the Constitutional inhibitions of ex post facto law, because of the penal provision of the Statute.

See also page 65 of the record where the following colloquy shows the extent of the ruling:

> Mr. Gruber. Are you ruling, Your Honor, in connection with this, landlords who obtained judgments before July 25, that the regulation is invalid, which prevents such evictions, or the Emergency Price Control Act itself is invalid?
>
> The Court. Yes; I ruled as to those suits, that that provision that undertook to have included those cases, by having its provision made retroactive in there, is not valid.
>
> Mr. Gruber. That the Act itself is invalid?
>
> The Court. That it is invalid as to those suits.
>
> Mr. Gruber. You are not ruling, then, just to the regulation?
>
> The Court. No.

SUMMARY OF ARGUMENT

I

The Price Control Extension Act of 1946 revived the Rent Regulation for Housing for all purposes as of July 25, 1946, and as of that date the Rent Regulation for Housing prohibited a landlord from evicting a tenant who paid his rent, unless the landlord obtained from the Administrator a certificate authorizing him to pursue his remedies at local law to evict the tenant. Neither the Act nor the Regulation excepted from their operation a landlord who had obtained a judgment during the interim period (July 1–July 25, 1946) when it was not unlawful to obtain such a judgment. Consequently, the Act and Regulation prohibited a landlord who had obtained a judgment during the interim period from executing it after July 25, 1946. The court below did not question the reach of the Act and Regulation in that respect.

II

The court below was without jurisdiction to pass upon the validity of the Rent Regulation, although it did have jurisdiction to pass upon the validity of the Price Control Extension Act of 1946. Its decision on the validity of the Act, which, it is assumed, was based upon the due-process clause of the Fifth Amendment, is clearly erroneous.

It is well established that reasonable legislation which operates adversely upon rights acquired previous to the enactment of the legislation, does not constitute a denial of due process. This doctrine has been applied by this Court to unexecuted judgments as well as to contract and other property rights, and this Court has applied it to rights of the latter character where they were adversely affected by Price Control legislation. In any event there is no substantial difference, for the purpose of this doctrine, between rights acquired under judgments and those possessed under contracts or other forms of property.

The Act is not retroactive in its effect, inasmuch as it applies only to evictions after the enactment of the extension. Even if it be said that the Act is "retroactive" in its effect, the authorities are legion that this does not in itself compel this Court to strike down the legislation on that ground, especially where, as here, the persons asserting the grievance were fully warned as to the pending extension of the law.

III

The court below committed error in holding that Section 265 of the Judicial Code forbade it from enjoining the state officials. If that section would bar injunction proceedings against state officials, it would likewise bar such proceedings against landlords who proceed in state courts to evict their tenants, and this Court has held that

it does not bar such proceedings against the latter. The injunction provided by the Act would be rendered largely nugatory if all persons who are about to deprive tenants of the protection provided by the Price Control Act, could not be enjoined.

ARGUMENT

I.

THE PRICE CONTROL EXTENSION ACT OF 1946 AND THE RENT REGULATION FOR HOUSING PROHIBITED THE ENFORCEMENT OF THE EVICTION JUDGMENTS ENTERED BY THE STATE COURT

Section 18 of the Price Control Extension Act of 1946, enacted on July 25, 1946, *infra*, pp. 24–25, provided that that Act should be effective as of June 30, 1946, and that all regulations and orders issued under the Emergency Price Control Act, which were in effect on June 30, 1946, should be in effect in the same manner and effect as if the Act had been enacted on June 30, 1946, except that acts or omissions occurring between June 30, 1946, and the date of enactment should not be deemed to be violations of the Emergency Price Control Act, as amended, or of any regulations or orders issued thereunder. Thus, the Price Control Extension Act retroactively placed the Emergency Price Control Act and the regulations issued thereunder effective on June 30, 1946, in full force and effect, with the exception noted, during the interim period, and also placed the said Act and regulations in full force and

effect prospectively without exception as of July 25, 1946. See *Porter* v. *Shibe*, 158 F. 2d 68 (C. C. A. 10).

Section 6 of the Rent Regulation for Housing, *infra*, pp. 26–29, both on June 30, and July 25, 1946, provided that a tenant who paid the rent to which the landlord was entitled, could not be removed from the rented housing accommodations except where, on petition of the landlord, the Administrator certified that the landlord was entitled to pursue his remedies at local law to evict the tenant. Plainly then the reviving Act which caused the Rent Regulation to become of full force and effect, together with the Regulation itself, on July 31, 1946, the date upon which the instant action was instituted, prohibited landlords from proceeding to evict their tenants without complying with the requirements of the Regulation. Neither the Act nor the Regulation contained language which would except landlords who had obtained judgments during the interim period, and on July 25, 1946, the same day the Act became effective, the Office of Price Administration in an official interpretation announced that a landlord who had obtained a final judgment of eviction during the interim period might not lawfully evict the tenant under that judgment after the Act and Regulation had been revived, without complying with the eviction provision of the Regulation. See Official Interpretation 6–VI, *infra*, pp. 29–31. This in-

terpretation is not "plainly erroneous or inconsistent with the regulation," and it is, therefore, entitled to "controlling weight." *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410. Consequently, on the date the instant action was instituted, the Rent Regulation, as revived by the Price Control Extension Act of 1946, prohibited the landlords here involved from evicting their tenants without complying with the requirements of the Rent Regulation, notwithstanding the fact that they had recovered final judgments of eviction during the interim period when such action by them did not violate the Emergency Price Control Act or the Rent Regulation.[2] The court below did not suggest that the Act and Regulation did not prohibit the evictions here in question, if they could validly do so.

---

[2] Interpretation 6-VI is not inconsistent with Interpretation 6-I of May 29, 1943, *infra*, pp. 31–32.

Interpretation 6-I was concerned only with a situation where the Rent Regulation first became effective in a particular defense-rental area, and where there was no Act of the Congress which had made the regulation involved effective for any purpose at the time the judgments of eviction were recovered. Since landlords had no ready means of learning when a rent regulation would be made effective in a given area, it was thought that they should not be prevented from executing judgments of eviction which they had in good faith obtained at expense to themselves prior to the existence of any form of rent control in the particular vicinity.

Interpretation 6-VI, on the other hand, was concerned with a situation where the Congress had revived a pre-existing Act and regulation making them effective, except as to violations occurring during the interim period, from the date they had expired, thus creating, at all times, at least a dormant

II

THE PRICE CONTROL EXTENSION ACT OF 1946, AS APPLIED TO THE INSTANT CASE, IS CONSTITUTIONAL

The court below ruled not only that the Rent Regulation was invalid, but also that the Price Control Extension Act of 1946 itself was unconstitutional, in so far as it did not permit landlords to take advantage of judgments of eviction obtained during the period when there was no rent control and when the procuring of such judgments was not illegal. It is clear that in view of the exclusive-jurisdiction provisions of the Emergency Price Control Act (Section 204 (d)), the court below had no jurisdiction to make the first ruling, though it did have jurisdiction to rule on the constitutionality of the Act itself. *Yakus* v. *United States*, 321 U. S. 414, 430.

It is assumed that the decision on the constitutionality of the Act is based on the due-process clause of the Fifth Amendment, rather than on the prohibition against *ex post facto* laws (Art. I, Sec. 9), since the latter applies only to criminal prosecutions and not to civil

---

form of rent control. In view of this and of the general understanding throughout the interim period that some form of rent control would shortly be put into effect, it was thought that the Congress intended, when enacting the reviving legislation, that a judgment of eviction recovered by a landlord when he was acutely aware that price control would shortly be resumed, should not be considered as vesting in him a right immune from impairment by the revived Act and Regulation.

actions. *Calder* v. *Bull,* 3 Dall. 386. But neither may it be said that the operation of reasonable legislation adversely upon rights previously acquired by judgment constitutes a denial of due process. That an otherwise valid exercise of legislative power[3] operates to defeat rights acquired through a judgment obtained before the legislative enactment is no barrier to its validity. In *Wright* v. *Union Central Life Ins. Co.,* 304 U. S. 502, an Act of Congress altering the terms of the period allowed for redemption on a judgment of foreclosure of a mortgage was sustained. In *Missouri & Arkansas L. & M. Co.* v. *Greenwood District,* 249 U. S. 170, a state law reducing the rate of interest prescribed in a judgment previously entered was upheld.[4]

---

[3] Price and rent controls during periods of war or of inflationary pressures following war have been upheld by this Court as not violative of the due-process clauses of the Fifth or Fourteenth Amendments. Such controls have been deemed to be a valid exercise of the legislative power to avert the disastrous economic dislocation consequent upon war. *Block* v. *Hirsh,* 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman,* 256 U. S. 170; *Yakus* v. *United States,* 321 U. S. 414; *Bowles* v. *Willingham,* 321 U. S. 503.

[4] Cf. also the long line of cases stemming from *The Schooner Peggy,* 1 Cranch 103, which apply legislative changes to cases while pending on appeal, though the effect may be to reverse a judgment which was correct when rendered. See, *e. g., Carpenter* v. *Wabash Ry. Co.,* 309 U. S. 23. See also *Paramino Lumber Co.* v. *Marshall,* 309 U. S. 370, in which a private Act of Congress was upheld which reopened a compensation case in which an award had already been made.

733763—47——3

Cases involving contract rights are also pertinent. For purposes of the present issue, there is no substantial difference between rights acquired through a judgment and those based upon a preexisting contract or other property right. See *Blount* v. *Windley*, 95 U. S. 173, 176, where this Court said: "The judgment itself presupposes, and is founded on, some antecedent obligation or contract, and is only higher evidence of that contract, because it now has the sanction of the judicial determination of its validity and amount by a court of law. The essential nature and character of the contract remains unchanged; and, in deciding how far it may be affected by legislation, we must look mainly to the original contract." And the cases in which the qualification or destruction of prior contractual rights by subsequent legislation has been upheld are legion. As stated in *Guaranty Trust Co. of New York* v. *Henwood*, 307 U. S. 247, 258–259, "contracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of Congress." See also *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *Norman* v. *B. & O. R. Co.* 294 U. S. 240, 306–310; *Holyoke Power Co.* v. *Paper Co.*, 300 U. S. 324; *Home Building & Loan Assoc.* v. *Blaisdell*, 290 U. S. 398; *New York* v. *United States*, 257 U. S. 591; *East New York Savings Bank* v. *Hahn*, 326 U. S. 230. While

these cases arose under the federal interstate commerce power or the police power of the states, it can scarcely be doubted that the war power is at least equally broad. See *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 156; *Hirabayashi* v. *United States*, 320 U. S. 81, 93. And in *Taylor* v. *Brown*, 137 F. 2d 654 (E. C. A.), certiorari denied, 320 U. S. 787, the Rent Regulation and the Emergency Price Control Act were upheld despite the contention that they invalidly impaired the obligations of contracts in existence before their promulgation. As stated by Mr. Justice Holmes in *Dillingham* v. *McLaughlin*, 264 U. S. 370, 374, "The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future."

It is important to note that the injunction sought by the Administrator is to restrain the eviction of tenants after the passage of the Extension Act of July 25 in accordance with regulations in effect at that time. The Act is thus not being retroactively applied. In *New York Central R. R.* v. *United States*, No. 2, 212 U. S. 500, 505, defendant railroad was indicted for paying a rebate contrary to the terms of the Elkins Act. The contract for the rebate had been made and the goods transported in interstate commerce prior to the passage of the Elkins Act; but the rebate was not actually given until after the law was passed. The Court held that

inasmuch as the rebate was given after the passage of the Act, to apply the Act to the rebate was not to give it retroactive operation regardless of when the contract was made or the goods transported. See also *United States* v. *Freight Association,* 166 U. S. 290, 342; *In re Rahrer,* 140 U. S. 545, 564–565; *Mulford* v. *Smith,* 307 U. S. 38, 51.

Many decisions of this Court establish that even as to physical property, which is at least as sacrosanct as a judgment, the fact that the prospective operation of a statute may deprive persons of rights or values which they possessed legally before the law was passed does not violate the due-process clause. *Mugler* v. *Kansas,* 123 U. S. 623; *In re Rahrer, supra; United States* v. *Freight Ass'n, supra; Hadacheck* v. *City of Los Angeles,* 239 U. S. 394, 408; *Chicago & Alton R. R.* v. *Tranbarger,* 238 U. S. 67; *Ruppert* v. *Caffey,* 251 U. S. 264, 301; *Samuels* v. *McCurdy,* 267 U. S. 188, 193; *Miller* v. *Schoene,* 276 U. S. 272, 279–280; *Mulford* v. *Smith, supra,* at pp. 49–51.

In *Mugler* v. *Kansas, supra,* a state law prohibiting the manufacture and sale of intoxicating liquor was upheld both as applied to factories lawfully built at great expense and to beer lawfully acquired before the passage of the law—although the investment in such property might be completely destroyed as a result of the statute. In *Ruppert* v. *Caffey, supra,* where the

application of the Volstead Act to beer on hand at the time of passage of the law was sustained, although the value of the property was thus destroyed. In *Hadacheck* v. *City of Los Angeles*, *supra*, a Los Angeles ordinance prohibiting the manufacture of bricks within a prescribed area was upheld as applied to a brick manufacturer with an already established business within the area. Cf. *In re Rahrer*, *supra*. In *Chicago & Alton R. R.* v. *Tranbarger*, *supra*, a statute imposing penalties upon a railroad for failure to maintain openings through its road-bed for drainage purposes was held valid as applied to an embankment lawfully built without such openings before the passage of the Act. As we have seen, *supra*, pp. 14–15, these principles have been applied repeatedly in upholding the application of statutes to previously existing continuing contracts.

Even if it be said that the Price Control Extension Act of 1946 is "retroactive" in its effect, there is, as shown by the foregoing authorities, no magic in the word "retroactivity" which compels this Court to strike down legislation to which that label has been attached. As stated in *Blount* v. *Windley*, 95 U. S. 173, 180:

> It may be said that this legislation is retroactive; and, as applied to the case before us, it is so. But there is no constitutional inhibition against retrospective laws. Though generally distrusted, they are often

> beneficial, and sometimes necessary. Where they violate no provision of the Constitution of the United States, there exists no power in this court to declare them void.

Or, as Mr. Justice Holmes observed (speaking as Chief Justice of the Massachusetts Judicial Court):

> * * * multitudes of cases have recognized the power of the Legislature to call a liability into being where there was none before, if the circumstances were such as to appeal with some strength to the prevailing views of justice, and if the obstacle in the way of the creation seemed small * * *

(*Danforth* v. *Groton Water Co.*, 178 Mass. 472, 476, recently quoted with approval in *Chase Securities Corp.* v. *Donaldson*, 325 U. S. 304, 315).

Retroactive legislation is particularly defensible where it can be shown that the person asserting a grievance had not been induced to rely upon the law previously in force. Compare *Welch* v. *Henry*, 305 U. S. 134; *Chase Securities Corp.* v. *Donaldson*, 325 U. S. 304, 316; and *Milliken* v. *United States*, 283 U. S. 15, 23, with *Forbes Pioneer Boat Line* v. *Board of Commissioners*, 258 U. S. 338, 340; see also Stimson, *Retroactive Operation of Law—A Problem in Constitutional Law*, 38 Mich. L. Rev. 30, 39; and this principle has been specifically applied to situations where legislation was pending at the time in Congress which would adversely affect the transactions in

question. *United States* v. *Hudson*, 299 U. S. 498, 501; Stone, Brandeis, and Holmes, JJ. concurring in *Untermyer* v. *Anderson*, 276 U. S. 440, 446–447. It can scarcely be contended that the appellees in the instant cases were not aware in July 1946, of the imminence of the renewal of rent controls. While there were sharp cleavages in Congress and between Congress and the President concerning other facets of price controls, there was virtual agreement that at least rent controls would have to be renewed. A number of bills for the purpose were introduced both immediately before and after the President's veto of the first extension bill; and the legislation was under consideration by Congress at the time that the appellees obtained their judgments of eviction.[3]

[3] No less than six bills were introduced for this purpose alone, most of them by members of Congress who were not otherwise favorable to price controls. These bills were: H. R. 6894, 92 Cong. Rec. 7779 (Rep. Summers); H. J. Res. 372, 92 Cong. Rec. 8205 (Rep. Wolcott); S. J. Res. 171, 92 Cong. Rec. 8168 (Sen. Byrd); H. J. Res. 375, 92 Cong. Rec. 8318 (Rep. Pittenger); S. J. Res. 175, 92 Cong. Rec. 8660 (Sen. Hawkes); H. R. 7017, 92 Cong. Rec. 8933 (Rep. Price).

Meanwhile, H. J. Res. 371, which became the Price Control Extension Act of 1946, had been introduced in the House on June 29, before the old law had expired. 92 Cong. Rec. 8132. It passed the House on July 1 (92 Cong. Rec. 8204), and an amended version passed the Senate on July 12 (92 Cong. Rec. 9005). The conference [redacted] was approved by the House on July 23 (92 Cong. Rec. 9918) and by the Senate on July 24 (92 Cong. Rec. 10064) and was signed by the President on the following day. Thus, during the entire period in which there was no price or rent control, the bill which was to become the Price Control Extension Act of 1946

In conclusion it will be noted that the Circuit Court of Appeals for the Tenth Circuit upheld the validity of the Price Control Extension Act in the closely analogous case of *Porter* v. *Shibe*, 158 F. 2d 68. There, the state law authorized a landlord to evict his tenant on notice without having to go into court to obtain a decree of eviction where the lease specified such an eviction right in the landlord. The landlord took advantage of this right under his lease during the interim period between July 1 and July 25, 1946, but had not succeeded by the latter date in forcing the tenant out. The district court refused to enjoin the landlord from carrying out his intention to remove the tenant. The circuit court of appeals reversed, and ordered the district court to issue the injunction. The validity of the Price Control Extension Act of 1946, even in its "retroactive" application, was upheld.

---

was pending in Congress, and received wide newspaper and radio publicity throughout the country.

It may also be noted that in a radio address to the Nation which he made after vetoing the first extension bill, the President stated:

"But in the event of delay, I know that the United States can depend upon the patriotism and good sense of its citizens. Therefore, I call upon every businessman, every producer and every landlord to adhere to existing regulations, even though for a short period they may not have the effect of law. It would be to their own interest to exercise self-restraint until some action can be obtained from the Congress."

III

THE SHERIFF AND CONSTABLE SHOULD NOT HAVE BEEN DISMISSED FROM THE ACTION

The court below held that Section 265 of the Judicial Code (28 U. S. C. 379) forbade it from enjoining state officials from executing eviction judgments rendered contrary to federal law (R. 63–64). This is clear error. If Section 265 of the Judicial Code were applicable at all, it would bar injunction proceedings against the landlords who were plaintiffs in the state court just as fully as those against the state law enforcement officials; but this Court has held that that section has been repealed *pro tanto* by Section 205 (a) of the Emergency Price Control Act. *Bowles* v. *Willingham*, 321 U. S. 503; *Porter* v. *Dicken*, 328 U. S. 252. And in *Bowles* v. *Willingham* and *Porter* v. *Dicken*, *supra*, as well as in *Brown* v. *Wright*, 137 F. 2d 484 (C. C. A. 4), and *Bowles* v. *Hall*, 63 F. Supp. 826 (W. D. Pa.), injunctions under the Emergency Price Control Act ran against the landlord and the sheriff; and in *Porter* v. *Lee*, 328 U. S. 246, and *Brown* v. *Wick & Campbell*, 48 F. Supp. 887 (E. D. Mich.), it ran against the landlord and the justice of the peace. The issue was not specifically raised in these cases, but since the defect, if any, would have been jurisdictional, it could have been noted by any of the courts at any stage of the respective cases. Furthermore, it is submitted that no other determination could

be reasonable, since the Administrator's remedy of obtaining injunctions "to enforce compliance with the Act" would be valueless if all of the persons who are actually about to deprive tenants of the protection afforded them by the Act could not be restrained.

CONCLUSION

The judgment of the court below is erroneous. It should be reversed and the court below ordered to grant the relief requested.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.
JOHN R. BENNEY,
Attorney.
WILLIAM E. REMY,
Deputy Commissioner for Enforcement,
DAVID LONDON,
Director, Litigation Division,
SAMUEL MERMIN,
IRVING M. GRUBER,
ALBERT J. ROSENTHAL,
Of counsel,
Office of Temporary Controls,
Office of Price Administration.

MARCH 1947.

APPENDIX

1. The pertinent portions of the Emergency Price Control Act of 1942, 56 Stat. 23, 58 Stat. 632, 59 Stat. 306, 50 U. S. C. App. Supp. V, 901 et seq., provide as follows:

> SECTION 2 (d). Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.
>
> SECTION 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section

202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SECTION 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

2. The pertinent portions of the Price Control Extension Act of July 25, 1946, Pub. Law No. 548, 79th Cong. 2d Sess., Chapter 671, provide as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 (b) of the Emergency Price Control Act of 1942, as amended, is amended by striking out "June 30, 1946" and substituting "June 30, 1947".

SECTION 18. (1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules, and requirements under the Emergency Price Control Act of 1942, as amended (except regulations or requirements under section 2 (e) thereof relating to meat, flour, or coffee), and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect

in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946: *Provided,* That in any case in which the Emergency Price Control Act of 1942, as amended (except sections 204 and 205), or the Stabilization Act of 1942, as amended (except sections 8 and 9), or any regulation, order, or requirement under either of such Acts, prescribes any period of time within which any act is required or permitted to be done, and such period had commenced but had not expired on June 30, 1946, such period is hereby extended for a number of days equal to the number of days from July 1, 1946, to the date of enactment of this Act, both inclusive; *Provided further,* That no act or transaction, or omission or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such Acts: *Provided further,* That insofar as the provisions of this Act require the Administrator to make any change in any maximum price, such provisions shall not be deemed to require such change to be made before the thirtieth day following the date of enactment of this Act.

3. The pertinent portions of the Rent Regulation for Housing (8 F. R. 7322; 10 F. R. 11666; 11 F. R. 5824, 8106) provide as follows:

> SECTION 6. *Removal of tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, * * *.
>
> (b) *Administrator's certificate*—(1) Removals not inconsistent with Act or regulation. No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof. The certificate shall authorize the pursuit of local remedies at the expiration of six months after the date of filing of the petition unless the Area Rent Director has de-

termined that a three months' period is adequate for the purposes of the Act in the particular area in issuing certificates under section 6 (d) (2), in which event the applicable period shall be three months. Within the discretion of the Area Rent Director the certificate may authorize the pursuit of local remedies for the removal or eviction of the tenant at a time less than six or three months, as the case may be, after the date of the filing of the petition if the petitioner establishes that unusual hardship would otherwise result, or that a lesser period in the particular case is consistent with the purposes of the regulation and the Act.

* * * * * *

(d) *Notices required*—(1) Notices prior to action to remove tenant. Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant and the facts necessary to establish the existence of such ground. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or

eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought, the facts necessary to establish the existence of such ground and specifying the time when the tenant is required to surrender possession: *Provided, however,* That the requirement of this sentence shall not apply to housing accommodations within the City of Baltimore, Maryland, the Northeastern New Jersey Defense-Rental Area, or the Trenton Defense-Rental Area, when the ground for the removal or eviction of a tenant is non-payment of rent.

If judgment for posession is sought by virtue of a confession of judgment or a warrant of attorney authorizing confession of such judgment against the tenant, the date of commencement of the action as referred to in this section shall be deemed to be the date of the filing in court of the first papers in the proceedings for the entry of such judgment.

Where the ground for removal or eviction of a tenant is non-payment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply if the eviction is pursuant to a certificate issued by the Administrator under the provisions of paragraph (b) of this section.

(2) Notice at time of commencing action to remove tenant. At the time of commencing any action to remove or evict a tenant, including an action based upon non-payment of rent, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the

number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

(e) *Local law.* No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

SCHEDULE A—DEFENSE-RENTAL AREAS

Name of defense-rental area	State	County or counties in defense-rental area under Rent Regulation for Housing	Maximum rent date	Effective date of regulation	Date by which registration statement to be filed (inclusive)
(316)	Fort Worth, Tex.	Tarrant	3-1-42	(1)	12-16-42

[1] Sections 1, 6, 13, Oct. 15, 1942; remaining sections, Nov. 1, 1942.

4. The pertinent Interpretations of the Rent Regulation are as follows:

(a) Interpretation 6–VI: *Evictions Pending On July 25, 1946.*

The Emergency Price Control Act of 1942, as amended, on July 25, 1946, was extended by striking out "June 30, 1946" and substituting "June 30, 1947," as the expiration date of the Act. Section 18 provides that the provisions of the Act shall take effect as of June 30, 1946. In this section a savings clause was inserted for the protection of persons who had acted contrary to the regulation during the interim period between June 30, 1946, and July 25, 1946. This savings clause provides that no act or transaction occurring between said dates shall be deemed a violation. As a result any eviction which occurred during the interim period was not a violation of the Act or regulation. By reason of this the tenant

who has been in fact evicted during this interim period receives no protection. If, however, he is in possession on July 25, 1946, he is entitled to the protection of the eviction provisions of the regulation and it is a violation of the regulation for the landlord on or after that date to attempt to evict by court process or otherwise except in accordance with the provisions of Section 6 of the regulation.

ILLUSTRATIONS

1. L had no ground under the regulation for eviction. On July 1 L instituted an eviction suit in the local court, obtained final judgment and writ of possession and obtained T's eviction prior to July 25, 1946. Even though L's action was contrary to Section 6 of the rent regulation, it is provided in the Act that his eviction of T shall not be deemed a violation and the eviction is valid.

2. L is a veteran who owned the housing accommodations prior to October 20, 1942, and who sought in good faith immediate possession of the premises as a dwelling for himself. L complied with Section 6 of the regulation and obtained final judgment on July 15, 1946. However, T was still in possession on July 25, 1946. Since L has complied with the regulation, his eviction of T by utilizing the processes of the court under the judgment obtained is not a violation.

3. L had no ground for eviction under the regulation and did not comply with the notice requirements of Section 6 (d). L instituted suit on July 1, 1946, and obtained judgment for eviction on July 15, 1946, under the local law, but T was still in

possession on July 25, 1946. Even though L's act in instituting suit and obtaining judgment is not a violation of the regulation by reason of the savings clause in the Act it is nevertheless a violation of the regulation for L after July 25, 1946, to attempt to evict T by the utilization of court processes or otherwise except in accordance with the regulation. This is true even though L has obtained final judgment for eviction in the local court. It would be a violation for L to attempt T's eviction by utilizing an execution or writ of possession which had been stayed by the court until after July 25, 1946, or for L to attempt to evict T through an execution or writ of possession which had been issued before said date but not in fact executed.

4. L obtained a certificate relating to eviction under Section 6 (b) (2) effective six months from June 1, 1946. On July 1, 1946, L instituted an eviction action and obtained judgment on July 15, 1946, but T was still in possession on July 25, 1946. Although L's action in instituting suit was not a violation by reason of the savings clause in the Act, any attempt by L to evict T on or after July 25, 1946, by the utilization of court processes or otherwise is a violation of the regulation. L can, of course, proceed to evict under local law at the expiration of six months from June 1, 1946.

(Issued July 25, 1946)

(b) Interpretation 6-I—May 29, 1942.

Where an action to evict is pending on the date the regulation becomes effective in a particular defense-rental area, the provisions of Section 6 are applicable unless a court order has been entered prior to the

effective date of the Regulation directing the tenant to surrender possession. If such an order has been entered, the court may use its ordinary processes for enforcement of such order and the landlord may request such processes. If no such order has been entered, the landlord may not further pursue his proceedings except in accordance with Section 6.

Assume the effective date of the Regulation is June 1, 1942. On April 30, 1942 B occupies housing accommodations under a lease with A, the landlord, and on that date the lease terminates. On May 1, B tenders rent for the month of May which A refuses to accept. A institutes eviction proceedings in accordance with local law. On May 29, 1942, A secures judgment for possession. B is still in possession on June 1, 1942. A may thereafter seek enforcement of the judgment pursuant to local law without reference to the grounds of eviction set forth in Section 6 of the Regulation.

Assume the same facts, except that on May 31, 1942 judgment for possession has not as yet been entered. The landlord must comply not only with local law but also with Section 6 of the Regulation, and may not further prosecute his proceeding unless he has grounds of eviction under said section.

(Issued May 29, 1942; revised May 15, 1943)

U. S. GOVERNMENT PRINTING OFFICE: 1943